

REMARKS

Claims 1-3, 5, and 7-13 are pending in the application.

By the foregoing Amendment, claims 1, 5, and 7-9 are amended. Claims 4 and 6 are cancelled without prejudice or disclaimer. New claims 10-13 are added, of which new claims 10 and 11 are independent and replace canceled claims 4 and 6.

Claim 1 has been amended for better conformity with U.S. practice. Claim 5 has been amended to depend from new claim 10. Claims 7-9 have been amended to depend from new claim 11.

New claims 10 and 11 recite the article limitations similar to those of canceled claims 4 and 6, but have been written to better conform to the requirements of U.S. practice. They additionally recite the limitation of the cutting means intermixing the soil material and the liquid together in the cut trench, to better define the invention relative to the prior art.

These changes are believed not to introduce new matter, and entry of the Amendment is respectfully requested.

Based on the above Amendment and the following Remarks, Applicant respectfully requests that the Examiner reconsider all outstanding objections and rejections, and withdraw them.

Rejections under 35 U.S.C. § 112, ¶ 2

On page 2 of the Office Action, claims 4, 6, 7, and 9 were rejected under section 112, second paragraph as being indefinite.

1. Claim 4, lines 3-4

Claim 4 was rejected on the basis that the frame was defined in terms of an element, “the cut trench,” that is not part of the invention. To the extent the Examiner may consider this rejection to be applicable with respect to new claim 10, which replaces claim 4, this rejection is respectfully traversed.

As stated by the *Federal Circuit in Moore U.S.A, Inc. v. Standard Register Company*, 229 F.3d 1091, 56 USPQ2d 1225 (Fed. Cir. 2000), “there is nothing wrong with defining the dimensions of a device in terms of the environment in which it is to be used. *See Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1575-76, 1 USPQ2d 1081, 1087-88 (Fed. Cir. 1986) (holding that the limitation that the claimed wheelchair have a ‘front leg portion . . . so dimensioned as to be insertable through the space between the doorframe of an automobile and one of the seats thereof’ was not indefinite).”

The definition of the frame in claim 4 is exactly analogous to the situation in *Orthokinetics*. Accordingly, it is respectfully submitted that the definition of the frame is in compliance with section 112, second paragraph; and that the rejection should be withdrawn.

2. Claim 4, line 5

Claim 4 also was rejected due to lack of antecedent basis for “the soil material.” To the extent the Examiner may consider this rejection to be applicable with respect to new claim 10, which replaces claim 4, this rejection is overcome by the deletion of “the.”

3. Claim 6, line 7

Claim 6 was rejected due to lack of antecedent basis for “the carrier implement” in line 7. To the extent the Examiner may consider this rejection to be applicable with respect to new claim 11, which replaces claim 6, this rejection is respectfully traversed. Claim 6, line 3 recited “a carrier implement”; and this recitation is carried over to new claim 11.

4. Claim 6, line 6

Claim 6 was also rejected for use of the word “means” without a function. This rejection is overcome by the cancellation of claim 6, and rewriting of this limitation in new claim 11 to positively recite “a linear guidance mechanism,” and thereby avoid use of the objected-to phrase “by means of.” The amended limitation is believed to have the same meaning as the original limitation, whereby the scope of this limitation is not changed.

5. Claims 7 and 9

On pages 2-3, claims 7 and 9 were rejected for reciting a narrow limitation together with a broad limitation. This rejection is overcome by the amendment of claims 7 and 9 to delete the narrow limitations. The narrow limitations are now recited in new claims 12 and 13 depending respectively from claims 7 and 9.

Rejections under 35 U.S.C. § 102

On page 3 of the Office Action, claims 1-9 were rejected under section 102(b) as being anticipated by German patent document DE 16 34 262 (“German ‘262”). To the extent the Examiner may consider this rejection to be applicable to amended claim 1, new independent claims 10 and 11,

and the claims depending therefrom, it is respectfully traversed as being based upon a reference that does not teach the claimed invention.

The idea of the invention is that soil material stripped by at least one cutting wheel/cutting means is conveyed into a rear area of the cut trench, where it is directly mixed with a settable liquid using the cutting wheels. According to the invention, the stripped soil material is conveyed from the cutting wheel/cutting means in a rear area above the cutting wheel. The settable liquid is introduced into the cut trench at the frame of the trench wall cutter. Through the action of the cutting wheel/cutting means, the stripped soil material is mixed in place with the settable liquid to a mixture for forming the trench wall.

In German '262, lines 2, 3 shown in the figure are hydraulic lines for supplying hydraulic fluid to the hydraulic drive of the cutting wheels 6, 7. Conduit 3 is the hydraulic line for the backflow of the hydraulic fluid. In contrast to the present invention, as can be seen from the single figure of German '262, both cutting wheels 6, 7 convey the stripped soil material to a center area above a suction tube 1. The stripped soil material is conveyed outside the cut trench by a suction opening 16.

Furthermore, German '262 does not teach introducing a settable liquid at the frame of the trench wall cutter.

In view of the foregoing, it is respectfully submitted that German '262 does not anticipate the invention as recited in independent claims 1, 10, and 11 and the claims depending therefrom; and that the rejection should be withdrawn.

Conclusion

All objections and rejections have been complied with, properly traversed, or rendered moot. Thus, it now appears that the application is in condition for allowance. Should any questions arise, the Examiner is invited to call the undersigned representative so that this case may receive an early Notice of Allowance.

Favorable consideration and allowance are earnestly solicited.

Respectfully submitted,

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